

**MINUTES OF THE MEEETING
OF THE BOARD OF DIRECTORS OF
THE DEPARTMENT OF WATERWORKS**

Date: June 26, 2003

The Board of Directors (the "Board") of the Department of Waterworks (the "Department") met at 200 East Washington Street, Indianapolis, Indiana in the Public Assembly Room of the City-County Building. The following Board members were in attendance: Samuel L. Odle, John Mutz, S. Michael Hudson, Beulah Coughenour, Jack Bayt and Barbara Howard.

Chairperson Odle announced that because some Board members must leave the meeting prior to its conclusion, the agenda would be addressed in inverse order starting with the last resolution listed on the agenda and ending with the approval of the minutes of last month's meeting.

I. Resolution No. 11, 2003- Approval of Certain Capital Project

Carlton Curry, Director of Contracts and Operations of the Department, summarized the resolution.

Chairperson Odle asked when the roof subject to the resolution had last been replaced. Mr. Curry added that he did not have that information.

Chairperson Odle asked for a motion to adopt the resolution. A motion was made and seconded to adopt the resolution. The Board unanimously adopted the resolution.

II. Resolution No. 12, 2003-Approval of Westfield Water Purchase Agreement

Chairperson Odle asked if there were any further questions from the Board. He added that the rate for water purchased would be equal to the rate the Town of Westfield purchases from the Department.

Chairperson Odle asked for a clarification of Harbour Water's relationship with Westfield. Mr. Curry stated that Hamilton Western was selling water to Harbour Water, a former subsidiary of the Indianapolis Water Company, and Westfield was purchasing water from Harbour. Mr. Curry added that Westfield has purchased Hamilton Western and the contract before the Board today addresses Harbour's purchase of water from Westfield, formerly Hamilton Western.

Vice Chairperson Mutz asked why the contract refers to the Wilfong plant and Cherry Tree plant. Mr. Curry deferred to Jeff Dieterlen of USFilter Indianapolis Water, LLC ("USFIW"). Mr. Dieterlen stated that the original contract stated water would be

purchased from the Wilfong plant and not the Cherry Tree plant. He added the text of the contract before the Board merely reinstitutes previous language on this matter.

Chairperson Odle asked about the economic impact of the rate purchase increase in the contract. Mr. Curry responded that over time the Department will benefit from the new rate. Chairperson Odle stated it appears the Department is paying more than previously and asked what that means. Robert Erney, Financial Manager of the Department, stated that the monthly minimum payment of the current contract is just over \$17,000 with an average payment of \$20,700. He added that the incremental amount is therefore \$3600 per month which would double under the new rate. Mr. Curry added that Westfield had originally asked for a raise in the minimum monthly payment which staff rejected.

Vice Chairperson Mutz moved to adopt the resolution. The motion was seconded. Chairperson Odle asked if there were any questions from the Board. Hearing none, Chairperson Odle called for a vote on the adoption of the resolution. The Board unanimously adopted the resolution.

III. Resolution No. 13, 2003- Approval of Amended and Restated Code of Professional Conduct

Kobi Wright, Special Assistant Corporation Counsel, stated the following: At the May 29, 2003 meeting of the Board, the Board unanimously adopted a Code of Professional Conduct to protect the Board's duty to act in the best interest of ratepayers and bondholders by protecting the dissemination of confidential and proprietary information and privileged communications between the Board and its attorneys. There has been public concern expressed about provisions that could be read to require Board consent before Board members speak to the public about Department of Waterworks matters that are not themselves privileged, proprietary or confidential. While the previously adopted Code of Professional Conduct complies with the law, it is recommended that those provisions of public concern be clarified. Mr. Wright then deferred to James A. Strain of Sommer Barnard Ackerson, PC to summarize the resolution.

Mr. Strain summarized the resolution. He affirmed that the code of professional conduct is a living document and will continue to be so. He outlined three basic changes: (1) removal of prohibition of Board members speaking to the media without the Chairperson's consent, (2) the code now explicitly states the implicit intent of the prior code which is that the code must comply with specific provisions of public access law and (3) certain communications may now occur with the approval of the majority of the Board instead of the Chairperson or counsel.

Ms. Coughenour stated it was her understanding that the code would not address matters that were not privileged. She asked if that in fact was the case and if so would the amended code address only those matters. Mr. Strain answered that the prior code implicitly addressed only privileged matters and that the amended code specifically addresses those matters.

Chairperson Odle added that as counsel has stated this code is a living document and will be amended from time to time and now is proposed to be amended to address some public concerns.

Mr. Bayt stated that it was his understanding that the prior code only addressed privileged matters.

Chairperson Odle asked if there were any additional questions or comments from the Board on the resolution. Hearing none, Chairperson Odle asked for a motion to approve the resolution. A motion was made and seconded. The Board unanimously approved the resolution.

IV. Presentation of Water Partnering Initiative with Department of Public Works

Chairperson Odle chose to address item 6 as listed on the posted agenda prior to addressing a resolution declaring the Board's support of water partnering initiative (listed on the agenda as item 7).

Mr. Curry introduced Carlton Ray of the Department of Public Works. He added that the Department, per previous reports to the Board, has met with the Department of Public Works to join together to undertake joint capital improvement programs that would present financial and operational efficiencies. Mr. Curry added that some of the Barrett law projects identified by Public Works also are in unserved areas in Marion County.

Mr. Ray summarized the resolution in the presentation as set forth in Exhibit A attached hereto and made a part hereof. Mr. Ray added that Public Works is pleased at the opportunity to work more closely with the water utility now that it has become a part of city government.

Ms. Coughenour and Mr. Ray discussed the boundaries of the Thompson/Emerson and Bangor/Delaware proposed pilot project areas.

Mr. Hudson mentioned the impacts on: (1) the USFilter contract, (2) subcontractor relationships, (3) capital plan and (4) rates and services with the addition of new services are matters that the Department must address in the future. Mr. Curry agreed affirmatively and added for that reason the projects mentioned are pilot projects to evaluate such concerns. Mr. Curry expects to recommend to the Board relatively early in 2004 whether these projects should continue to be funded.

Mr. Hudson asked if the projects are in districts that under state law allow the Department to increase rates to spread the cost throughout the district. Mr. Curry responded that the Department in coordination with the health department has determined that these areas would not be eligible for the type of rate relief that applied to Rocky Ripple and Ravenswood.

Vice Chairperson Mutz commended the Department's staff and Public Works to initiate these discussions given that their goals make good common sense. He asked if this is practically a joint venture, mechanically, meaning would one contract be bid for both departments.

Mr. Ray said it would be one contract with a contractor with different parts. Vice Chairperson Mutz asked Mr. Ray if he had experience allocating costs within a contract. Mr. Ray responded affirmatively and stated that the departments will have to work through matters to determine where concerns may exist on the mechanics. Vice Chairperson Mutz asked if legal counsel has been involved as to liability. Mr. Ray stated legal counsel with both departments have been addressing those matters.

Chairperson Odle commended the projects' initiative. He added that this initiative-providing better service to neighborhoods, low rates, improving water quality, providing more work for USFilter personnel- shows one of the benefits of the city acquiring the utility and contracting the daily operations to USFilter and its staff. Chairperson Odle asked if Citizens Gas would be a part of this.

Mr. Ray said that via the Public Works Coordination Council the departments would coordinate with other utilities. Chairperson Odle asked if the customers are required to hook up to water and sewer lines. Mr. Ray stated on the sewer side it is mandatory and the water hook ups are voluntary.

Chairperson Odle asked if there are unserved areas in Center Township. Mr. Ray stated there are some septic systems that ring the township and there are some combined sewer issues within the township.

Mr. Curry stated the map presented with projects shows unserved water areas where Barrett Law projects are planned. Chairperson Odle asked if the Board would receive a report concerning solely unserved water areas in Center Township. Mr. Curry stated he hopes to do so. Mr. Ray stated Public Works will work with the Department to address those concerns too. Chairperson Odle asked if Public Works would work with the Department to coordinate water projects with combined sewer overflow projects. Mr. Ray responded affirmatively and added that he hopes to do so on other projects as well.

Chairperson Odle stated that Department and Public Works should design projects to get the maximum community participation.

V. Resolution No. 14, 2003-Declaration of Support of Water Partnering Initiative

Chairperson Odle asked for a motion to adopt the resolution. Ms. Coughenour moved for the adoption of the resolution. Vice Chairperson Mutz seconded the motion. Chairperson Odle asked if any further questions or comments were forthcoming from the Board. Hearing none, Chairperson Odle called for a vote to adopt the resolution. The Board unanimously adopted the resolution.

VI. Report of the Director of Contracts and Operations of the Department

Mr. Curry summarized his report as set forth in Exhibit B, attached hereto and made a part hereof (the "Department Report").

Chairperson Odle asked what the monthly loss of water is in Darlington mentioned in the Department Report. Mr. Curry stated the water loss is not metered thus the information is not available. Chairperson Odle asked who pays for the loss water. Mr. Curry stated USFilter but the Department receives no revenue.

Chairperson Odle asked that the Department may want to repair the hydrants owned by Darlington as a measure to stop the loss of water given that Mr. Curry stated the repairs are estimated at \$3700.

Mr. Dieterlen stated he and Mr. Curry have met with the Darlington Fire District and Fire Department who operate the hydrants. He added that Darlington budgets \$6300 annually for the availability of hydrants and do not have the funds to make the repairs.

Mr. Curry stated he would be in favor of making repairs unless the Department incurs some liability to do so. Mr. Bayt agreed.

Ms. Coughenour stated it appears a hold harmless agreement could be arranged to conduct these repairs. Mr. Wright stated that the Department and USFIW can arrange a hold harmless agreement. He added that the question between the Department and USFilter will be whether USFIW is paid to conduct these repairs under its fixed fee.

Mr. Curry continued to deliver the Department Report.

Mr. Hudson asked concerning taste and odor, is it appropriate to state no fishkills related to treatments have occurred or any complaints been raised on that matter. Mr. Curry stated that some fish were found dead south of Geist reservoir however to the best of his knowledge taste and odor treatments are not responsible. He added the rationale behind this analysis is that no dead fish were found on the backside of the dam which is inconsistent with a fish kill related to taste and odor treatments. He added that to the best of his knowledge no complaints have been made concerning fish kills.

Chairperson Odle asked when the Hazen and Sawyer report was due. Mr. Curry responded April 2003 and that he is not aware of any complaints from Carmel concerning the fact that the report has not been issued.

Chairperson Odle asked if there is another body that would review any acquisition of Boone County Utilities prior to the Board addressing it. Mr. Wright stated the Service Advisory Board of the Department has the capacity to review and offer a recommendation on the matter. Chairperson Odle stated that as the Department internally conducts a review of the advisability of an acquisition, such a review should structure the

acquisition in a manner that encourages support from Boone County as opposed to opposition.

Ms. Coughenour asked if there is any reuse of water that is going on in Indianapolis. Mr. Curry stated he is unaware of such a program. Ms. Coughenour added that it makes sense to look at the possibility of implementing such an initiative. James Keene of USFIW stated USFIW's proposed capital plan looks at the possibility of alternative methods such as a reuse or gray water program.

Chairperson Odle stated he supports further investigation into establishing a conservation plan prior to the consideration of next year's capital program.

Ms. Coughenour asked if the State of Indiana rules requiring USFIW to give 5 day notice prior to treating reservoirs for taste and odor should be a matter that USFIW, the Department and the State of Indiana could amend to provide for a more timely treatments.

Ron Maness of USFIW stated that the Department of Natural Resources ("DNR") issues the permit applying some Indiana Department of Environmental Management ("IDEM") provisions. Mr. Maness stated that USFIW can appeal for a shorter time period upon the issuance of the permit next year however this could also work against shortening the time period. Ms. Coughenour asked if USFIW has discussed the concerns of algae blooms peaking during the notice period with state officials. Mr. Maness stated the current 5 day notice period was discussed in this year's permit process. He added that he believes that this 5 day period appears to be a sacred provision of the permit.

VII. Report of USFIW

Mr. Keene summarized USFIW's report to the Board as set forth in Exhibit C attached hereto and made a part hereof ("USFIW Report"). Mr. Keene introduced Tim Hewitt as the Chief Operating Officer of USFIW. Mr. Hewitt stated that he is committed to the success of the relationship between the Department and USFIW. Mr. Keene also introduced LaNita Bates, USFIW's Contract Administrator.

Mr. Keene also stated that USFIW would repair the hydrants owned and operated by Darlington that were mentioned in the Department Report and cost allocation would be determined at a later date.

Mr. Keene continued to present the USFIW Report. He addressed the following public comments made at the May 2003 meeting:

-He stated Mr. Pratt stated that (1) the reservoir study submitted by USFIW was severely lacking and not in conformance with the management agreement, (2) USFIW missed the reservoir nutrient sampling season last year and will this year and (3) USFIW has chosen not to undertake storm event monitoring and is conducting instead a 5-10 year research effort. Mr. Keene responded that the management agreement is open to interpretation as

to the requirements of the reservoir study. He added that USFIW did miss the sampling date last year due to the commencement date of the management agreement. He added that USFIW now collects 44 samples each quarter and the cost of such analysis is \$125,000 not including staff time, logistical support or equipment. He added that USFIW will not miss this year's sampling season. Mr. Keene further stated that sampling is collected prior to and following rainfalls which began in February 2003. He stated an implementation plan addressing the results would be implemented in 3 years but preliminary results will be published before that period.

-Mr. Keene stated Tom Plummer asserted accrued sick time and vacation time payments by USFIW was the money USFIW employees had earned. Mr. Keene stated Mr. Plummer was correct to state that USFIW employees earned the time paid, however, USFIW employees did get a substantial windfall from the payments given that employees were paid at their full hourly rate versus the former IWC standard practice of payments at \$8.00 per hour for accrued sick time. He added one employee received \$94,000 from this payment.

VIII. Financial Report of the Department

Mr. Erney presented the financial report of the Department as set forth in Exhibit D attached hereto and made a part hereof (the "Financial Report").

Chairperson Odle and Mr. Erney clarified the allocations in the Financial Report concerning 2002 and 2003 incentive payments to USFIW.

Chairperson Odle asked if the purchasing line item of the Financial Report is for Department's purchases not USFIW's purchases. Mr. Erney stated yes.

Mr. Erney entered into the minutes articles and subsequent corrections of those articles that appeared in *The Indianapolis Business Journal* and *The Indianapolis Star* as set forth in Exhibit E attached hereto and made a part hereof. Mr. Erney stated the earlier dated newspaper articles erroneously reported that revenues and net income dropped 25% and 19% commensurately. He added these errors occurred because the periodicals compared data from a full calendar year of NiSource ownership in 2001 to the 8 month period of city ownership in 2002. He added that from April 30, 2001 to April 30, 2002, under NiSource, water billings were approximately \$97.4 million compared to \$101.8 million from April 30, 2002 to April 30, 2003 under city ownership resulting in a 4.3% increase. He added that the conclusion is the water system is growing.

Ms. Coughenour stated NiSource agreed to pay the city for sludge it had deposited in the city's treatment plants and that the amount has not been paid. Ms. Coughenour asked if the city can recoup those funds from NiSource.

Mr. Wright stated he is investigating the matter. He added that NiSource did disclose the existence of the contract between it and the city concerning sludge discharge however he

is investigating whether NiSource disclosed that it had not made payments that were due under the contract. Ms. Coughenour asked for a report on that matter in the future.

IX. Approval of the Meeting Memorandum of May 29, 2003

Chairperson Odle asked for motions to approve of the meeting memorandum of an executive session of May 29, 2003 (the "Memorandum") as set forth in Exhibit F, attached hereto and made a part hereof. A motion was made and seconded for approval of the Memorandum. The Board unanimously approved the Memorandum.

X. Approval of the Meeting Memorandum of April 24, 2003

Chairperson Odle asked for motions to approve the meeting memorandum of an executive session of April 24, 2003 (the "April Memorandum") as set forth in Exhibit G, attached hereto and made a part hereof. A motion was made and seconded for approval of the April Memorandum. The Board unanimously approved the April Memorandum.

XI. Approval of the Minutes of May 29, 2003 Meeting

Chairperson Odle asked for motions for the approval of the minutes of the meeting of the Board as of May 29, 2003 (the "Minutes") as set forth in Exhibit H, attached hereto and made a part hereof. A motion was made and seconded for approval of the Minutes. Ms. Coughenour asked the Minutes to be revised to state "Beulah Coughenour" at the top of page 1 and strike "Barbara Coughenour" from the Minutes. The Board unanimously approved the Minutes as revised.

XII. Other Business

Chairperson Odle stated the public comment period was open and asked that individuals limit their comments to three minutes thereby permitting as many people as possible the opportunity to address the Board.

Glenn Pratt stated that he supported a cooperative initiative between the Department and Public Works. He added that concerning conservation, people should water their lawns in the late afternoon and that a public education aspect of a conservation plan should reflect this.

Mr. Pratt stated he had proposed a working group of IDEM, DNR and US Geological Services to gain agreement on the nutrient report however USFIW refused to cooperate. He added that the report could have been completed in six months and cost \$50,000. He added that he would like to see USFIW state a date certain for delivery of the complete report. He added that the Department's 2002 incentive payments to USFIW did not penalize USFIW for not delivering an adequate report. He further added that he probably should not encourage the Department to penalize USFIW given that USFIW's attorneys

have told him that to the extent his comments influence payments to USFIW, USFIW would come after him to collect it.

Mr. Pratt stated that the dead fish spoken of earlier was a fish kill and recorded as such with IDEM given that the dead fish appeared at the same time USFIW applied treatments. He added that he has asked USFIW to add to its DNR permit the conditions previously in place with the water company. He encouraged the Board to try and get these issues resolved.

He added that the process has not been open and that Board counsel has argued that the public should not know when the Citizens Advisory Group should meet and that citizens should not be permitted to participate. He added that he has asked for documents that have not been provided.

Chairperson Odle asked if there were any further public comments. Hearing none, Chairperson Odle adjourned the meeting at 7:46 p.m.

Approved this 31st day of July 2003.

Samuel L. Odle, Chairperson

Attest:

S. Michael Hudson,
Secretary-Treasurer